

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**BRANDEIS UNIVERSITY and
GFA BRANDS, INC.,**

Plaintiffs,

v.

NESTLÉ USA, INC.,

Defendant.

Civil Action No. 1:12-cv-1513

Judge Richard A. Posner

Consolidated under No. 1:12:cv-1508

**NON-FINAL JUDGMENT OF NON-INFRINGEMENT OF CLAIMS 7, 8,
AND 34 OF U.S. PATENT NO. 5,843,497**

The Court, having considered the Joint Stipulation And Motion For Entry Of Non-Final Judgment Of Non-Infringement Of Claims 7, 8, and 34 (“Asserted Claims”) of U.S. Patent No. 5,843,497 (the “’497 patent”) (Dkt. 342), hereby ORDERS as follows:

1. Based on the Joint Stipulation and the construction of the term “cholesterol-free” as set forth in the Court’s order on claim construction dated August 24, 2012, the Court finds that the following products do not infringe Claims 7, 8, and 34 of the ’497 Patent:

- Nestlé Toll House Chocolate Chip Cookie Dough made according to the formula and process applicable to the product Plaintiffs tested (which bore UPC code 050000622399);
- Nestlé Toll House Chocolate Chip Cookie Dough made according to any of the formulas and processes produced at NUSA00025735-NUSA00025780, which includes Nestlé’s “chub” and “tub” lines; and
- Nestlé Toll House Chocolate Chip Cookie Dough made according to any of the formulas and processes produced at NUSA00025795-NUSA00025806, which includes Nestlé’s “bar” lines.

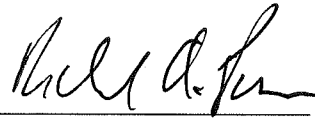
2. In light of the Joint Stipulation, entry of dismissal of all asserted claims under the ’497 patent against Nestlé USA, Inc. (“Nestlé”) is appropriate. The Court does not decide the

merits of any other defenses or any of the invalidity or unenforceability counterclaims that Nestlé has against the Asserted Claims in this case.

3. The Court hereby enters a non-final judgment of non-infringement of claims 7, 8, and 34 of the '497 patent as to Nestlé for the foregoing products. This non-final judgment shall have the same preclusive effect as entry of summary judgment of non-infringement. The judgment set forth herein shall be included in any final judgment in the consolidated case.

4. Each party shall bear its own costs as to the Asserted Claims.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Richard A. Posner", written over a horizontal line.

Hon. Richard A. Posner